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Companies and Allied Matters Act, 2020: Compliance Requirements

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The Companies and Allied Matters Act, 2020 (“**CAMA 2020**”) has modified regulatory compliance requirements of corporate entities in material respects some of which are highlighted below.

(a) Notices of general meetings for public companies

Under the now repealed Companies and Allied Matters Act 1990, public companies were required to deliver notices of general meetings to (i) every member of the company, (ii) the auditor(s) for the time being of the company, (iii) legal representative, receiver or a trustee in bankruptcy of a member, (iv) every director of the company, and (v) the secretary of the company. Also, service of notices of general meetings were required to be effected by personal service or by post.

Under CAMA 2020, public companies must, in addition to those listed in (i) to (iv) above, serve on the Corporate Affairs Commission (the “**Commission**”) notices of all general meetings. Notices of general meetings may now be served by e-mail in addition to personal service or by post. ss.243 and 244(3).

Consequences of non-compliance

Failure by a public company to give notice of any general meeting to the Commission invalidates the meeting unless such failure is an accidental omission on the part of the company. s. 245 of CAMA 2020.

What should you do?

Include the Commission on the schedule of persons entitled to receive notices of general meetings, and deliver notices of general meetings to all persons so entitled.

(b) Corporate Governance Requirement: Separation of the Positions of Board Chair and the Chief Executive Director

Corporate governance best practices all over the world strongly recommends the separation of the positions of Board Chairperson and the Chief Executive Officer. This recommendation/requirement is contained in the SEC Code of Corporate Governance 2011, the Nigerian Code of Corporate Governance 2018, and the CBN Code of Corporate Governance for Banks and Discount Houses 2014.

To ensure compliance with this separation principle for public companies in every sector, CAMA 2020 codifies the separation of the positions stating that “*The chairman of a public company shall not act as the chief executive officer of such company*” – s. 265(5).

What should you do?

If in your company, the Board Chairperson is same person as the Chief Executive Officer, appoint a non-executive director as the Board Chairperson.

(c) Register of Directors' Residential Addresses

Under the now repealed Companies and Allied Matters Act 1990, every company was required to maintain the following registers:

- (a) Register of Members;
- (b) Register of Directors;
- (c) Register of Secretaries;
- (d) Register of Debenture Holders;
- (e) Accounting Records;
- (f) Minutes of Meetings;
- (g) Register of Substantial Interest in Shares;
- (h) Index of Members;
- (i) Copies of Instrument creating Charges;
- (j) Register of Chargers; and
- (k) Register of Particulars of Charges.

In addition to the above registers, CAMA 2020 requires every company to maintain a register of directors' residential addresses which shall state the usual residential address of each of the company's directors. (see s.320).

Consequences of non-compliance

Where the company fails to keep the register of director's residential addresses, the company and each officer of the company are each liable to a penalty in such amount as the commission shall specify.

(d) Appointment of Independent Directors for Public Companies

Under CAMA 2020, all public companies are required to have at least three independent directors on the Board.

An "**Independent Director**" is "a director of the company who, or whose relatives either separately or together with him or each other, during the two years preceding the time in question - (a) was not an employee of the company; (b) did not - (i) make to or receive from

the company payments of more than ₦20,000,000, or (ii) own more than a 30% share or other ownership interest, directly or indirectly, in an entity that made to or received from the company payments of more than the amount stated in subparagraph (i) or act as a partner, director or officer of a partnership or company that made to or received from the company payments of more than such amount; (c) did not own directly or indirectly more than 30% of the shares of any type or class of the company, and (d) was not engaged directly or indirectly as an auditor for the company.”(see s.275)

Consequences of non-compliance

CAMA 2020 and the Companies Regulations, 2021 do not stipulate any penalty for default in complying with the above requirement. However, the use of the word “**shall**” in s.275(1) connotes a mandatory requirement which every public companies should endeavour to comply with it.

What should you do?

Review the status of each director on the board of directors of your company to ensure that there are at least 3 directors who qualify as independent directors in accordance with the definition above.

Conclusion

Every company affected by the new requirements discussed above should endeavour to promptly comply with the requirements to prevent sanctions and/or penalties that may be imposed against such company.

G. Elias & Co. has been advising leading global and national clients on financial services sector regulation for more than 20 years. If you have any questions about financial services sector regulation, please contact Segun Omoregie (segun.omoregie@gelias.com) or corporate@gelias.com.

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